THE HONOURABLE SRI JUSTICE V.ESWARAIAH

W.P. No. 22045 of 2007

Date:27-11-2007

Between:

Chekka Durgamba

…Petitioner

AND

Sangani Narayana Rao

..

Respondent

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ORDER:

The petitioner seeks a writ of prohibition prohibiting the Court of the First Additional Junior Civil Judge, Kakinada from entertaining and proceeding with A.T.C.No.6 of 2005.

It is the case of the petitioner that he has filed O.S.No.185 of 1992 on the file of the Court of Principal District Munsif, Kakinada against the landlords for specific performance of agreement of sale by way of executing the registered sale deed in favour of the petitioner/plaintiff and the said suit was decreed against the first defendant by judgment and decree, dated 02.12.1996 holding that the defendants 2 to 4 have no liability to execute the registered sale deed in favour of the plaintiff. Against the said judgment and decree passed against the first defendant viz. Chekka Durgamba, the petitioner herself filed A.S.No.94 of 1997 on the file of the VII Additional District Judge, Kakinada and the appellate Court by judgment dated 31.01.2003 allowed the appeal and while allowing the appeal, no decree has been passed for delivery of the possession of the suit schedule property. But, a decree has been passed directing the plaintiff to deposit balance consideration and the defendants are directed to execute the sale deed.

The second appeal filed by the defendants 2 to 4 in S.A.No.445 of 2003 on the file of this Court was also dismissed observing that there was no decree passed for delivery of the possession.

It is stated that pursuant to the preliminary decree and judgment, sale deed was executed in the execution petition proceedings. Thus, it is not clear whether the possession was delivered in favour of the

decree-holder or not. That being so, it cannot be said that if any tenant is there in the said property is not entitled to file A.T.C.No.6 of 2005 on the file of the Special Officer-cum-Principal Junior Civil Judge, Kakinada. As a matter of fact, the said Special Court granted interim injunction in favour of the tenant, by order dated 25.10.2005 in I.A.No.765 of 2005 in A.T.C.No.6 of 2005 against the petitioner herein and the said injunction is subsisting and the petitioner has not at all challenged the said order. Therefore, it cannot be said that initiation of proceedings in A.T.C.No.6 of 2005 by the said Special Court is without jurisdiction.

In view of the aforesaid facts and circumstances of the case, the writ petition is dismissed. There shall be no order as to costs.

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V.ESWARAIAH, J.

Date:27.11.2007
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